IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2052 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTOSHKUMAR SURENDRANATH SHAH
Versus
UNION OF INDIA

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Appearance :
MR MUKUL SINHA for the Petitioner
MRS SUMAN KHARE for the Respondent

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 02/07/2007

ORAL JUDGMENT:

Rule. Ms Suman Khare waives service of Rule for the respondent. At the request of the learned advocates for the parties, the matter is taken up for final hearing today.

The petitioner is constrained to file this petition since his longstanding request to permit him to avail the benefit of Freedom Fighter Pension Scheme has not been responded to positively by the respondent. It is the say of the petitioner that during the Quit India Movement he had honoured the call given by Mahatma Gandhi and due to his activity to participation in the Freedom Movement he had to go underground since a warrant to arrest him was issued by Bagura Police Station of erstwhile East Bengal, which now forms part of Bangla Desh. The petitioner remained underground for the period from 12th October 1942 till May 1943. It is also his say that in the year 1946 he participated in the Novakhali Satyagraha with Mahatma Gandhi and remained as his representative of Khadi Pratishta for two months. It is his say that after the Independence in 1949 the country was divided into two parts and the region of Bagura forming part of erstwhile East Bengal became part of East Pakistan, which is presently known as Bangladesh. According to the petitioner, since then he has been staying in Ahmedabad and has permanently settled down in the City. This was done in accordance with the advice given by Shri Saumendranath Tagore, cousin of Shri Rabindranath Tagore. It is his say that he worked with several textile mills in Ahmedabad and lastly he was employed with Bharat Suryoday Mills, but with the closure of the Mill he became unemployed. He, therefore, made an application on 20th March 1992 to the Government of India for grant of Freedom Fighters Pension under Swatantra Senani Samman Pension Scheme, 1980. According to him, to his great misfortune, the only bread earner in the petitioner's family, that is, his son expired in the year 1986 and his plight since then has become very miserable. It is his say that in the month of April 1997 he applied to the State Government for grant of pension and the State Government has granted him pension with effect from 4.11.1997 of Rs.350 subject to the

sanction of the pension by the Government of India which is only income today. According to the petitioner, the respondent – Union of India has rejected the claim of the petitioner for pension despite requisite compliance of the norms, hence he has approached this Court by filing this petition.

The respondent has opposed the petition by filing affidavit-in-reply. It is the say of the respondent that the petitioner does not fulfill the criteria as laid down in the Scheme and therefore he is not entitled to receive the pension. According to the respondent, the primary evidence to substantiate his claim has not been produced by the petitioner. He has not even produced the Non Availability Certificate of this evidence issued by the State Government. Hence, his claim cannot be considered and it has been rejected accordingly.

I have heard Mr Mukul Sinha, learned advocate for the petitioner and Ms Suman Khare, learned advocate for the respondent. Learned counsel for the petitioner has submitted that the petitioner at present is aged about 84 years, his plight is very miserable. Despite his genuine claim to receive pension from the Government and to live an honourable and dignified life, he is totally dependent on others and he has been virtually rendered a beggar. According to Mr Sinha, the respondent has failed to consider the fact that the part of the country in which the petitioner was carrying on the activity as a freedom fighter is now forming part of Bangladesh and it is virtually impossible for him to obtain any evidence to substantiate his claim. He has drawn my attention to the affidavit of Shri Biren Banerjee, former Member of Legislative Assembly, West Bengal. He has stated in his affidavit that the petitioner was taking prominent part in the National Freedom Struggle.

That fact was within his own knowledge. He has further stated that he himself was recipient of Central Freedom Fighters Pension since 17th July 1973. He has certified that the petitioner is a bona fide freedom fighter and he has remained underground for more than six months for the period between 12.10.1942 and May 1943. He has also certified that he was one for whom detention orders were issued but he had evaded the arrest. That warrant was issued on account of petitioner's participation in the Quit India Movement during freedom struggle. He has also certified that to the best of his knowledge, the petitioner did not secure reprieve on account of oral or written apology tendered to the authority. He also did not go underground voluntarily or for fear of arrest on account of his patriotic activities. The second document that has been referred to by the learned advocate for the petitioner is the letter dated 4th February 2004 written by Shri Amrut Modi, Secretary of Gandhi Smarak Sangrahalay addressed to the petitioner. It is by way of acknowledgment of the shawl which was given to the said institution by the petitioner, which was received by him from Mahatma Gandhi in the month of November 1946.

Ms Khare has, however, submitted that since the petitioner is not in a positionh to either produce the primary evidence in respect of the underground suffering or the non-availability certificate of this evidence from the State Government, he is not entitled to receive the pension. According to her, the personal knowledge certificate given by Shri Banerjee also cannot be accepted because it does not give proper details.

Having carefully considered the rival submissions and having perused the record of this petition, it clearly appears that the petitioner did participate in the freedom struggle in the year 1942 onwards. It is

difficult to expect that the petitioner at this age would be in a position to produce primary evidence about his underground sufferings, which took place way back in the year 1942, more particularly when the area in which he carried on the activity in connection with Quit India Movement now forming part of Bangladesh. So far as the non availability certificate is concerned, the respondent has failed to appreciate the fact that the petitioner's claim lodged with the State for pension has been accepted by it and with effect from 4th November 1987 the State Government has been granting pension of Rs.350 per month to the petitioner. This very fact shows that even the State Government has accepted the version of the petitioner about his activity during the Quit India Movement and non-availability of the primary evidence. Not only that, but the affidavit of Mr Banerjee, who himself is recipient of benefit of pension under the Central Government scheme has stated on oath and certified that the petitioner was active participant in the freedom struggle warrant to arrest him was issued requiring him to go underground and he had to remain underground to evade the arrest for a considerable period. I do not see any reason not to accept the contents of the affidavit of Shri Banerjee. Three reasons stated in the affidavit of the respondent – Union Government to reject his Personal Knowledge Certificate do not appeal to me at all. In my opinion, that should be good evidence for the respondent to accept the claim of the petitioner and to grant him benefit under the aforesaid Scheme. The certificate does not at all appear doubtful. It had already undergone the scrutiny made by the State Government before it was forwarded to the respondent. Further, since Mr Banerjee himself is a recipient of the pension and appears to be contemporaneous freedom fighter operating in the then Bengal region there is no scope for doubting his certificate and it has to be accepted.

Mr Sinha has placed reliance on the judgment in the case of Government of India V. Jainalbhai Jayantilal Thakore dated 21st August 2006 in Letters Patent Appeal No.1008 of 2006 with Civil Application No.9364 of 2006. In almost identical facts, the Division Bench while confirming the decision of the learned Single Judge has dismissed the appeal of the Government of India and has upheld the decision of the learned Single Judge whereby the respondent of that appeal was allowed the pension under the aforesaid scheme. The Division Bench placed reliance on the decision of the Apex Court rendered in Gurdial Singh v. Union of India, JT 2001 (8) SC 165. The observations of the Apex Court quoted by the Division Bench are as under:-

> "As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the said Scheme. ..... Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence".

Thereafter, the Division Bench has held that in its view the respondent of that appeal was squarely covered by the judgment of the Apex Court. As stated above, the facts of this case are almost identical. The petitioner has furnished to the respondent his application giving full particulars about his participation in freedom struggle and its consequences, the personal knowledge certificate given by Shri Banerjee,

letter of Shri Modi, Secretary of Gandhi Smarak Sangrahalay and the certificate regarding pension given by the State Government. Thus, petitioner has produced sufficient material to probablise that he was a freedom fighter and what suffering he had undergone. The respondent should not go by technicalities. It should understand that had the petitioner not been a genuine claimant he would not have pursued the matter this long. This itself shows his nature to fight, even at this age, for the just cause till the last. In view of the aforesaid, I do not have any hesitation to hold that the petitioner also stands covered by the observations of the Apex Court made in the case of Gurdial Signh (supra) and therefore he is entitled to receive the benefit under the Central Government Pension Scheme. Hence, the respondent is directed to accept the claim of the petitioner and grant him pension under SSS Pension Scheme, 1980 forthwith. In the process, the order dated 19.10.2005 and order dated 31st March 2006 are quashed and set aside. The petitioner is entitled to get pension under the Swatantra Sainik Samman Pension Scheme, 1980 with effect from the date of his application and the respondent is directed to calculate and pay the amount of arrears of pension under the Scheme within three months from the date of receipt of writ of the order. The petition is therefore allowed. Rule is made absolute.

(Akshay H Mehta, J.)

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